

**INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY  
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009  
SECTION 1602 TAX CREDIT EXCHANGE PROGRAM  
SUBORDINATION AGREEMENT**

THIS SUBORDINATION AGREEMENT (the "Agreement"), is effective as of this \_\_ day of \_\_\_\_\_, 20\_\_ by and among **INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY**, a public body corporate and politic of the State of Indiana ("IHCD A"), [BORROWER], a \_\_\_\_\_ organized and existing under the laws of the State of Indiana ("Borrower"), and [SENIOR LENDER], a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_ ("Senior Lender").

**RECITALS**

**WHEREAS**, IHCD A is legal holder and owner of a certain real estate mortgage and security agreement or other evidence of obligation, which were or will be executed by Borrower in favor of IHCD A as of \_\_\_\_\_, 20\_\_, in the amount not to exceed \_\_\_\_\_ and No/100 (\$\_\_\_\_\_) (the "Section 1602 Obligation"), and recorded or to be recorded in \_\_\_\_\_ County on or no later than \_\_\_\_\_, 20\_\_, covering the real estate described on Exhibit A, attached hereto and made a part hereof, pursuant to that certain loan agreement by and between IHCD A and Borrower of even date herewith (the "Loan Agreement").

**WHEREAS**, Senior Lender has committed to Borrower to make a certain loan in the amount of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_) (the "Senior Obligation"), which is or will be secured by a real estate mortgage, security agreement, assignment of leases, fixture filings and all other agreements, pledges and collateral documents from time to time granted by Borrower to Senior Lender (hereafter the "Senior Collateral Documents"). As an inducement to Senior Lender to extend to Borrower the Senior Obligation, Borrower and IHCD A agree to subordinate the Section 1602 Obligation to the prior payment and satisfaction in full of the Senior Obligation. All capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Loan Agreement.

**AGREEMENT**

**NOW THEREFORE**, in consideration of the following mutual promises, covenants and conditions, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

2. Subordination. IHCD A, its successors and/or assigns, hereby subordinates the priority of the Section 1602 Obligation to the Senior Collateral Documents evidencing the Senior Obligation executed by the Borrower in favor of Senior Lender, effective or to be effective on or no later than \_\_\_\_\_, 20\_\_, and recorded or to be recorded on or no later than \_\_\_\_\_, 20\_\_, in \_\_\_\_\_ County (Instrument No. \_\_\_\_\_).

3. Appointment of Agent. **[INSERT WHERE SENIOR LENDER HAS ACCOUNT CONTROL AGREEMENT IN PLACE AND ACCOUNTS MATCH]** [Pursuant to that certain Account Control Agreement dated as of \_\_\_\_\_, 20\_\_ by and among Senior Lender, Borrower and \_\_\_\_\_ (“Bank”) (the “Account Control Agreement”), Bank agreed to comply with Senior Lender’s instructions regarding the Account(s) (as defined in the Account Control Agreement), in order that Senior Lender’s security interest in the Account(s) may be perfected. Pursuant to that certain Security Agreement dated of even date herewith by and between Borrower and IHCD, Borrower granted a security interest in the Account(s) to IHCD, which IHCD subordinated to the Senior Obligation as set forth herein. In order to perfect the security interest of IHCD in the Account(s), IHCD hereby appoints Senior Lender as its agent with respect to such Account(s) and directs Senior Lender to give instructions with respect to the Account(s) on its behalf.]

4. Default under Senior Collateral Documents. Senior Lender shall deliver to IHCD a default notice within five business days in each case where Senior Lender has given a notice of default to the Borrower. IHCD shall have the right, but not the obligation, to cure any monetary default within sixty (60) days following the date of such notice; provided, however, that Senior Lender shall be entitled during such 60-day period to continue to pursue its remedies under the Senior Collateral Documents. IHCD may have up to ninety (90) days from the date of the notice of Senior Obligation default to cure a non-monetary default. In the event Senior Lender commences an enforcement action under the Senior Collateral Documents following the occurrence of a default, IHCD agrees to cooperate with Senior Lender in maintaining the rental assistance agreements as permitted by the applicable regulatory and statutory requirements. Senior Lender shall promptly notify Lender of the commencement of any such enforcement action under the Senior Loan Documents.

5. Rights and Obligations of IHCD under Loan Documents and of Senior Lender under the Senior Collateral Documents. Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Loan Documents covering the same subject matter:

(a) Insurance; Condemnation or Casualty. (i) Senior Lender agrees that, in addition to Senior Lender, IHCD shall be listed as loss payee as its interest appears on all insurance policies maintained on the Property; (ii) in the event of a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Property or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Property (collectively, a “Casualty”), at any time or times when Senior Lender remains a lien holder on the Property the following provisions shall apply:

(1) IHCD hereby agrees that its rights (under the Loan Documents or otherwise) to participate in any proceeding or action relating to a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Casualty shall be and remain subordinate in all respects to Senior Lender’s rights under the Senior

Collateral Documents with respect thereto; provided, however, this subsection or anything contained in this Agreement shall not limit the rights of the IHCDCA to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Casualty;

(2) All proceeds received or to be received on account of Casualty, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment on the Senior Obligation) in the manner determined by Senior Lender; provided, however, that if Senior Lender elects to apply such proceeds to payment on the principal of, interest on and other amounts payable under the Senior Obligation, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Obligation including, without limitation, collection costs shall be paid to, and may be applied by, IHCDCA in accordance with the applicable provisions of the Loan Documents.

6. Information Regarding Draws on Senior Obligation. Senior Lender shall notify IHCDCA in writing of the amount of the draws made on the Senior Obligation and the purpose for which such draws are made within a reasonable time period following each such draw.

7. Notices. Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as “notices” and referred to singly as a “notice”) which Senior Lender or IHCDCA is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next business day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be based upon the date of actual receipt), addressed to the respective parties as follows:

IHCDCA: Indiana Housing and Community Development Authority  
30 S. Meridian Street, Suite 1000  
Indianapolis, IN 46204  
Attention: General Counsel

Senior Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Borrower: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*(Remainder of page intentionally left blank.)*

### NON-COLLUSION AND ACCEPTANCE

The undersigned attest, subject to the penalties for perjury, that he/she is Borrower or Senior Lender, as the case may be, or that he/she is the properly authorized representative, agent, member or officer of Borrower or Senior Lender, that he/she has not, nor has any other member, employee, representative, agent or officer of Borrower or Senior Lender, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face of this Agreement.

IN WITNESS WHEREOF, Borrower, Senior Lender and IHCD A have, through their duly authorized representatives, entered into this Agreement. The parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below hereby agree to the terms thereof.

Dated this \_\_ day of \_\_\_\_\_, 20\_\_.

**[BORROWER],**

organized and existing under the laws of the State of Indiana

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**[SENIOR LENDER]**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**INDIANA HOUSING AND COMMUNITY DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
Sherry Seiwert – Executive Director

STATE OF INDIANA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ the \_\_\_\_\_ of Borrower, who, being first duly sworn, acknowledged execution of the foregoing Subordination Agreement in such capacity as its voluntary act and deed.

Witness my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My County of Residence:

\_\_\_\_\_  
Printed Name

STATE OF INDIANA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ the \_\_\_\_\_ of Senior Lender, who, being first duly sworn, acknowledged execution of the foregoing Subordination Agreement in such capacity as its voluntary act and deed.

Witness my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My County of Residence:

\_\_\_\_\_  
Printed Name

STATE OF INDIANA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared Sherry Seiwert, the Executive Director of the Indiana Housing and Community Development Authority, who, being first duly sworn, acknowledged execution of the foregoing Subordination Agreement in such capacity as its voluntary act and deed.

Witness my hand and Notarial Seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires:

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My County of Residence:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
This document was prepared by Deborah K. Hepler, General Counsel, Indiana Housing and Community Development Authority.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law, *[insert name of preparer]*

1479266\_6; BME; 09/25/09

**EXHIBIT A**

LEGAL DESCRIPTION